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Telephone: 503-226-7391 • www.klarquist.com
Facsimile: 503-228-9446

FAX TRANSMITTAL

OFFICIAL

DATE: May 12, 2004

TO: William Dixon, Jr.
Technology Center 1600

FAX/PHONE: 703-872-9306

FROM: Kenneth S. Klarquist

RE: U.S. Plant Application No. 10/648,412
For CLIMBER ROSE PLANT NAMED 'HARYup'
Filed August 25, 2003

OUR FILE: 2747-66693-01

YOUR FILE: N/A

NO. PAGES 6 (including this cover page)

PLEASE ACKNOWLEDGE RECEIPT BY RETURN FACSIMILE? ☐ Yes ☒ No

CONFIRMATION TO FOLLOW? ☐ Yes ☒ No

CONTACT INFO: If you do not receive all pages or if you have problems receiving the transmittal, please call Marlene Elser at (503) 595-3812.

MESSAGE: This is a refax of our faxed communication dated May 22, 2004 to John Doll, Director of Technology Center 1600.

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*** TX REPORT ***

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KSK:clb 2747-66693 264526.doc 03/22/04

KLARQUIST SPARKMAN, LLP

16th Floor World Trade Center, 121 S.W. Salmon Street, Portland, Oregon 97204 U.S.A.
PHONE: 503-226-7391 FAX: 503-228-9446

**PLEASE DELIVER DIRECTLY TO JOHN DOLL, DIRECTOR,
TECHNOLOGY CENTER 1600**

Fax No.: (571) 273-0200

Total No. Pages: 4 including this cover sheet

Message: Transmitted herewith for filing in the above-identified application is a Supplemental Submission Regarding Applicant's Petition for Suspension of Prosecution Under 37 C.F.R. § 1.103. If you do not receive all pages or if you have problems receiving transmittal, please call Kenneth S. Klarquist at (503) 226-7391.

In re application of: Robert B. Harkness

Application No. 10/648,412

Filed: August 25, 2003

Confirmation No. 4022

**For: CLIMBER ROSE PLANT NAMED
'HARYUP'**

Examiner:

Art Unit: 1661

Attorney Reference No. 2747-66693

CERTIFICATE OF FACSIMILE

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being facsimile transmitted to fax number (571) 273-0200 on the date shown below.

Attorney
for Applicant(s)


Kenneth S. Klarquist

Date Transmitted March 22, 2004

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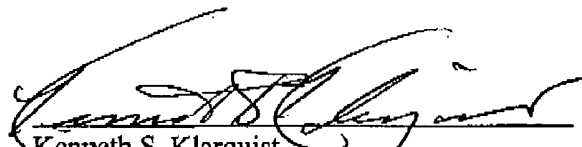
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Attorney
for Applicant(s)


Kenneth S. Klarquist

Date Transmitted March 22, 2004


Kenneth S. Klarquist
Registration No. 16,445

March 22, 2004
Date

cc: Client
Docketing

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KSK:KMH:cb 03/22/04 259973.doc
PATENT

Attorney Reference Number 2747-66693
Application Number 10/648,412

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Robert B. Harkness

Application No. 10/648,412

Filed: August 25, 2003

Confirmation No. 4022

For: CLIMBER ROSE PLANT NAMED
'HARYUP'

Examiner:

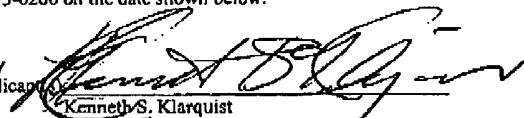
Art Unit: 1661

Attorney Reference No. 2747-66693

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper and any documents referred to as being attached or enclosed herewith are being faxed to John Doll, Director, Technology Center 1600, at Facsimile No. (571) 273-0200 on the date shown below.

Attorney
for Applicant


Kenneth S. Klarquist

Date Faxed March 22, 2004

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OFFICIAL

John Doll
Director, Technology Center 1600
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

**SUPPLEMENTAL SUBMISSION REGARDING APPLICANT'S PETITION FOR
SUSPENSION OF PROSECUTION UNDER 37 C.F.R. § 1.103**

Applicant requested suspension of prosecution of this application in a Petition filed January 12, 2004. Additional facts now exist that further favor granting Applicant's requested suspension in this case.

Applicant requested the Federal Circuit to order an advanced, joint hearing of the In re Elsner and In Re Zary appeals, as evidenced by the documents forwarded to Mr. John Doll (Director of Technology Center 1600) on or about February 13, 2004, regarding In re Zary (Appeal No. 03-1585, Application Serial No. 09/267,559). And the Federal Circuit has now ordered such advanced, joint oral arguments to be held April 9, 2004, as shown in the enclosed Order.

In addition, Applicant agrees that it will be bound in this case by the decision of the United States Court of Appeals for the Federal Circuit in In re Zary (Appeal No. 03-1585) with respect to the issue of whether an admittedly non-enabling printed publication enables a claim to a plant if there has been a foreign sale of the plant (subject to any rehearing by the Federal Circuit or decision by the Supreme Court). Applicant retains the right to appeal a rejection based on any other ground. Applicant understands that in view of this agreement, Applicant's

Page 1 of 2

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PATENT

Attorney Reference Number 2747-66693
Application Number 10/648,412

previously requested suspension will be granted and that examination of this case will be
suspended for 6 months.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By



Kenneth S. Klarquist
Registration No. 16,445

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121 S.W. Salmon Street
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United States Court of Appeals for the Federal Circuit J+P

ORAL ARGUMENT ORDER

2747-66409/KMH

03-1585

IN RE ZARY

This appeal is scheduled for oral argument in the U.S. Court of Appeals for the Federal Circuit, Howard T. Markey National Courts Building, 717 Madison Place, N.W., Washington, D.C.:

Date: Friday, April 9, 2004

Time: 10:00 A.M.

Courtroom No. 203

Argument Time: 15 MIN PER SIDE

Counsel for the appellant/petitioner/
intervenor(s): KENNETH S. KLARQUIST

Counsel for the appellee/respondent/cross-appellant/
intervenor(s): JOHN M. WHEALAN

The appeal having been placed on the oral argument calendar, counsel need not submit the statement allowed by Fed. R. App. P. 34(a), setting forth the reasons why oral argument should be heard. Notwithstanding the scheduling for oral argument, the panel of judges that will decide the appeal, upon further consideration, may yet disallow oral argument, under the circumstances set forth in Fed. R. App. P. 34(a), and, if so, counsel will be duly notified by the clerk.

An Information Sheet, Notices to Counsel on Oral Argument and Courtroom Decorum, a Calendar Announcement, and a pink Response to Oral Argument Order are attached.

Return the pink sheet no later than March 12, 2004. See Fed. Cir. R. 25(b) regarding facsimile transmission.

FOR THE COURT

JAN HORBALY
CLERK

February 24, 2004

cc: KENNETH S. KLARQUIST
JOHN M. WHEALAN

PATRICK H. BALLEW

DOCKETED FOR: 4.9.04
3.12.04
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